

Associated Ready Mixed Concrete, Inc. and General Truck Drivers, Office, Food and Warehouse, Local 952, International Brotherhood of Teamsters, AFL-CIO. Case 21-CA-30744

August 14, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND BROWNING

Pursuant to a charge and an amended charge filed by the Union on June 8 and 15, 1995, respectively, the General Counsel of the National Labor Relations Board issued a complaint on June 23, 1995, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain and to furnish relevant and necessary information following the Union's certification in Cases 21-RC-19300 and 21-RC-19304. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint, and submitting affirmative defenses.

On July 17, 1995, the General Counsel filed a Motion for Summary Judgment. On July 19, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On August 1, 1995, the Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The complaint alleges that since about May 19, 1995, the Respondent has refused to recognize and bargain with the Union as the exclusive bargaining representative of the unit. In addition, the complaint alleges that since about the same date, the Respondent has failed to furnish the Union with certain information it requested on May 5, 1995, including names of bargaining unit employees; rates of pay; policies regarding health insurance, pension plans, personal leave, promotions and transfers, and rules of conduct; and contracts with any other business entity for performance of work of the type performed by the unit.

In its answer and response to the Notice to Show Cause, the Respondent admits that it has refused to recognize and bargain with the Union and to furnish information, but attacks the validity of the Union's certification on the basis of its objections to the election in the representation proceeding. In addition the Respondent contends that, even if the Union was properly

certified, the Respondent was obligated to provide only some of the information requested by the Union. Specifically, the Respondent contends that it was not obligated to provide the Union with the requested subcontracting information.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding.¹ We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that no factual issues warranting a hearing are raised with respect to the Union's request for information. In agreement with the Respondent, we find that the subcontracting information requested by the Union is not presumptively relevant and that the Respondent was not obligated to furnish that information absent a showing of its relevance.² This however, does not excuse the Respondent's failure to provide all of the other information requested by the Union which the Respondent effectively admits, and we find, is presumptively relevant.³

Accordingly, we grant the Motion for Summary Judgment and will order the Respondent to recognize and bargain on request with the Union and to furnish it the information requested with the exception of the subcontracting information.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office in Little Rock, California, and place of business located at the corner of Alton Parkway and Town Center Drive in Lake Forest, California, has been engaged in business with a concrete batch plant providing delivery of ready-made concrete to construction jobsites.

During the 12-month period ending June 21, 1995, the Respondent, in conducting its business operations,

¹ In its response to the Notice to Show Cause, the Respondent suggests that the Board failed to properly assess certain testimony regarding Respondent's Objection 1, and asserts that the Board's findings in its Decision and Certification of Representative mischaracterized the evidence. Contrary to the Respondent, we find nothing in the cited testimony which directly contradicts the Board's findings in its Decision and Certification of Representative or otherwise warrants reconsideration.

² See *Ohio Power Co.*, 216 NLRB 987, 991 (1975).

³ See, e.g., *Sea-Jet Trucking Corp.*, 304 NLRB 67 (1991); and *A-Plus Roofing*, 295 NLRB 967, 972 fn. 7 (1989).

purchased and received products, goods, and services valued in excess of \$50,000 directly from suppliers located within the State of California, each of which had received these products, goods, and services directly from points outside the State of California.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held August 19, 1994, the Union was certified on April 25, 1995, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time truck drivers employed by the Employer at the Foothill Corporate Center facility located at the corner of Alton Parkway and Town Center Drive, Lake Forest, California; excluding all other employees, office clerical employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. *Refusal to Bargain*

About May 5, 1995, the Union, by letter, requested the Respondent to recognize and bargain and to furnish information, and, since about May 19, 1995, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after May 19, 1995, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union relevant and necessary information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We shall also order the Respondent to furnish the Union the information it requested, with the exception of the requested subcontracting information.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Associated Ready Mixed Concrete, Inc., Lake Forest, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with General Truck Drivers, Office, Food and Warehouse, Local 952, International Brotherhood of Teamsters, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit.

(b) Refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time truck drivers employed by us at our Foothill Corporate Center facility located at the corner of Alton Parkway and Town Center Drive, Lake Forest, California; excluding all other employees, office clerical employees, guards and supervisors as defined in the Act.

(b) Furnish the Union the information that it requested on May 5, 1995, with the exception of the requested subcontracting information.

(c) Post at its facility in Lake Forest, California, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be

⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with General Truck Drivers, Office, Food and Warehouse, Local 952, International Brotherhood of Teamsters, AFL-CIO as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time truck drivers employed by us at our Foothill Corporate Center facility located at the corner of Alton Parkway and Town Center Drive, Lake Forest, California; excluding all other employees, office clerical employees, guards and supervisors as defined in the Act.

WE WILL furnish the Union the information that it requested on May 5, 1995, with the exception of the requested subcontracting information.

ASSOCIATED READY MIXED CONCRETE, INC.